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Chair

Mr. Robert Oliphant

Standing Committee on Citizenship and Immigration

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● (1105)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I call to order the 104th meeting of the Standing Committee on Citizenship and Immigration, as we are continuing our study on the Immigration and Refugee Board's appointment, training, and complaint processes.

We're very glad to have two witnesses here: barbara findlay, who is joining us from Vancouver by video conference; and Cheryl Robinson, who is present. We had a third witness who is unfortunately ill today, and we will discuss this later, but I think we do have time for her to come on Thursday providing that she's feeling better.

I'm going to suggest that we begin with barbara findlay for her presentation, only because she's on video conference.

You have seven minutes.

Ms. barbara findlay (Lawyer, As an Individual): Thank you very much.

[*Translation*]

Hello everyone. I am very pleased to speak to you today about these important issues.

[*English*]

I acknowledge that I am on unceded Tsleil-Waututh, Musqueam, and Squamish territories.

I will introduce myself to you in this way. I am an old, white, cisgender lesbian. I was raised working class and Presbyterian in Regina.

I want to talk a bit about what the world was like for me when I was coming out in 1968. I fell in love with a woman, and she and I both believed that we were the only two women to fall in love with each other ever in history. As you can imagine, that put us way outside what we thought anybody would be interested in, could talk about, would know about. We existed in the Carleton public library in two books. One was *Abnormal Psychology*, and the other a "lesbian commits suicide at the end" novel called *The Well of Loneliness*.

We would certainly have told absolutely nobody of our sexuality. Bit by bit, after I moved to Vancouver from Ontario, one would encounter people and you'd wonder whether they might be gay or lesbian. It was way too risky to ask. You might have conversational gambits like, "Have you ever read Jane Rule?", who was at the time a contemporary lesbian novelist. That way you could have a conversation without ever outing anybody. It was a sacred commitment that no one ever outed anybody else that they knew to be gay.

I'm using those words because back in those days, "gay" and "lesbian" were the primary terms for our communities. The term "homosexual" went many decades ago as a respectful term for description of sexual orientation. Oppression as a queer is different than other kinds of oppression, for example, political oppression, because what we stand to lose first and foremost are our families of origin. Our families do not share our experience of persecution, but rather we risk losing them and our community.

It was the fact of coming to consciousness in a context where you were absolutely invisible in the culture. You could find tiny references. You were either mad or bad because you were either crazy—they locked me up in a mental hospital when I was a teenager because I was a lesbian—or you were a criminal. It was still under the Criminal Code at the time. If I lived with a partner, I had two choices. I either switched her gender in the stories I told about my weekend activities, or we were just roommates. I certainly didn't tell my doctor. When I tried to tell the psychiatrist, he skipped that appointment and never raised the issue again.

I read about bar raids, street harassments by police, people who had been fired, and lesbians who lost their children when they came out. I and everybody else led an entirely bifurcated life. I was out to almost nobody. Very few people would guess, because then, unlike now, there was no notion floating in the culture about "maybe she's a lesbian". As a lesbian, I have faced harassment and discrimination and so on.

● (1110)

As a cisgender woman—that is, someone whose sense of gender identity is congruent with the gender that was assigned to me at birth after they looked at my genitals—I am not harassed for my gender identity. I can walk down the street, and nobody will give me a second glance.

My partner, on the other hand, who is a very butch-looking woman, is routinely harassed in airports, washrooms, and public spaces. She has had the police call on her when somebody's boyfriend thought she was a man, and had gone into the wrong room. That has happened more than once. She and all transpeople are always one washroom from home, because you can never be sure that it's going to be safe to pee.

As a very out lesbian lawyer, I've been in a bar maybe three times in my life. Of transpeople in Canada—you may already know this, but think about it—more than a third of them considered suicide in the last year, and more than 11% of them attempted suicide. Some 57% have avoided public places; 98% reported a transphobic incident within the past year, including 24% who were harassed by the police; 39% have been turned down for a job, and 26% are physically assaulted. Typically transpeople don't seek medical care.

● (1115)

The Chair: I could go all day with you. I read Jane Rule, but I need you to keep going. With the committee's permission, I'll give you an extra minute.

Ms. barbara findlay: For my last minute, I'm going to invite you to take on for the rest of this conversation today a different gender identity than you actually have. If you are a cisgendered man, I invite you to consider that you are really a woman dressed today as a man, and imagine all the way through this conversation that somebody might out you. In order to make me and you feel welcome in an IRB hearing, what would you want?

First of all, you would want people to take the trouble to ask you how you identify. You can't tell by looking, you always have to ask. We have a set of name tags, he, she, they, them, and blank. How would you make sure that your claimants feel safe? What do your washrooms say? Do they say transpeople welcome, or do they simply have a sign on the washroom?

Would it be helpful to you as the claimant if the chair said, "I know I'm going to have to ask you some really sensitive and personal questions. I understand they may be uncomfortable for you, but I'm going to be asking them, in any case."

Mr. Chair, I can stop there for now.

The Chair: I'm sure you're going to get lots of rich questions to get more into the IRB. Thank you very much, Ms. findlay.

Ms. Robinson.

Ms. Cheryl Robinson (Associate Lawyer, Mamann, Sandaluk & Kingwell LLP, As an Individual): Good morning, all.

Thank you very much for inviting me to speak before the committee today.

My name is Cheryl Robinson. I'm an immigration and refugee lawyer. Although I practise before all four divisions of the IRB, I am going to be focusing my remarks on the refugee protection division and the training of its members, with a particular focus on what I believe to be inadequate training regarding questioning of traumatized, marginalized, and vulnerable persons, and the intersection in the quest for truthfulness or credibility, which is the heartland of the refugee board's mandate.

By way of background, at the refugee board there's a core principle of credibility, which is that sworn testimony of a refugee claimant is presumed to be true unless there's a reason to doubt that truthfulness. This is a Federal Court-mandated principle that has to be respected in all credibility findings. Even though there is this presumption of truth, what we often see in practice is that this results in a hunt for a reason to doubt truthfulness, for the board member to search for inconsistencies, plausibility concerns, or omissions. This often causes the board members to engage in very detailed, thorough, intrusive, and repeated questions on issues. Leaving aside the appropriateness of that response, I would note that when you engage with vulnerable and historically marginalized groups, such as the LGBTQ community and women facing gender-based violence, this search for truth, or the truthfulness or credibility of a claim, becomes that much more difficult.

In my own practice before the board, I have seen board members take a gamut of approaches on how to find the truth. I've seen board members engage successfully in very sensitive, inclusive, and most of all, respectful questioning of claimants. They ask about feelings, how the person felt about an event. They ask about what they recall as opposed to subjecting them to a series of intrusive questions with a particular response expected.

There are many others who take less positive approaches. For example, some will ignore the sensitive issue altogether. They won't ask any questions. They will instead engage in credibility determinations based on completely peripheral issues. I had a refugee claim that was denied because the address history was wrong, and this was used to determine that the claimant wasn't gay. These are not related.

On the other hand, we also see some board members who engage in very intrusive and specific questioning, and they will keep on asking because they believe it's part of the mandate to determine the credibility of a claim. I've heard board members ask things like "Do you remember how long the rape lasted?" "On average, how many times a week were you beaten?" "Per month?" "Just guesstimate." None of these questions actually draw out useful testimony. Instead, what happens is that you're re-traumatizing the claimant when these questions are being asked, and it inhibits their ability to answer. Claimants will shut down. They start providing incoherent or scattered answers. In fact, this type of questioning actually prevents the board from carrying out its mandate. It prevents them from getting to the credibility of a claimant and their experiences.

With all due respect to the very difficult task that RPD members have in determining claims, to me this points to inadequate training. That's because we see these completely inconsistent approaches being applied by different board members. It's quite clear that some of these negative approaches persist at the board despite whatever training is present.

I have a number of concrete suggestions, and I'm sure that some of them are going to repeat those of previous witnesses. I think some of these elements bear repeating.

The first is that training should include those who have gone through the refugee process as well as the agencies that work with these communities. What better way for board members to truly understand the impact of the questioning than to hear from someone who has been through that process? This could be done by way of recording, or by working with the agencies that work with these communities. It doesn't have to be an in-person experience. It should be focused on how they felt about questioning, not elements of their claim.

● (1120)

The training should also be trauma informed. The training should include working with mental health professionals to understand the impact on trauma, not just in terms of being able to provide testimony but also to recall memories and to be able to verbalize those traumatic events.

It should also include how to read and apply the psychological reports, because that, quite frankly, is a stumbling block in refugee determinations, as well as consideration and training on the potential for re-traumatization through the hearing process itself, which I believe is often left aside.

All of these training elements have to be coalesced through situational-based training, running through scenarios and case studies. It's not enough to simply have someone lecture at you, and then put you into a hearing. That training cannot happen on the job.

Related to that is the need for follow-up training. Mr. Aterman spoke about how there was a three-hour afternoon training on the application of the sexual orientation, SOGIE, guidelines. That isn't sufficient. What needs to happen is that, after this training, after the board members have had an opportunity to try out this training, they reconvene and discuss, canvass those issues, and see how well they are applying that training. Where are they struggling? That doesn't seem to be addressed. I see the same issues coming up with the same board members.

I also think it would be a really ideal time for those board members to listen to their own past hearing recordings to objectively hear for themselves how they dealt with a difficult line of questioning or a case, not just what they said, but how they said it. Tone impacts on the person's ability to answer. Feedback on the application of the training would allow those board members to really hone and develop their skills and training.

My final suggestion is a bit different, which is that, if it is too onerous for the training to be conducted for the entire board, that there be developmental teams that specifically engage with certain communities or certain case types. For example, right now the board uses country-based teams. You have a team that hears lots of claims from China or lots of claims from Somalia.

Why don't we use that to have a team that deals with primarily gender-based violence claims where it is a central element of the claim or where a sexual orientation or gender identity is the core? This would allow for the training of very specialized expert teams that would not just understand how to work with such claimants, but be trained on how to question them, how to elicit the appropriate testimony, and how to ignore peripheral issues that really aren't relevant to the issue of whether someone is gay or someone has been raped. I think this would be an extension of the guidelines that are already in place. We recognize that these populations are particularly vulnerable. I believe that this would be an appropriate step to consider.

● (1125)

The Chair: Thank you, Ms. Robinson.

For the first round of questioning, we have Mr. Anandasangaree.

Mr. Gary Anandasangaree (Scarborough—Rouge Park, Lib.): Thank you very much to both of you for coming here and presenting today.

I know it's very timely in the sense the of the LGBTQ intersectionality that we've seen lately. I know of the senseless murder yesterday of another individual who came on the MV *Sun Sea* in 2009. The potential link, I think, is quite worrisome and really speaks to the complex issues that you have identified today, Ms. findlay.

I'd like to get a sense of how—for example, you're talking about gender-based violence— we look at the issue of intersectionality. I'd like to get a sense of how we make sure that the IRB is trained to ensure that it looks at specific countries, but maybe there's a country-specific and gender-based violence lens that may be even more specific or more specialized than having just thematic or country specific issues alone.

We'll start with you, Ms. findlay, then Ms. Robinson.

Ms. barbara findlay: The issue of intersectionality is very important in this context. For example, going back to the business of the claimant, they have a terrible choice to make. If they are known to be gay in their community—for example, if they're out in the refugee camps or in their cultural community after they come to Canada—then they will be known as out in that community and they will be severed from their community of origin, a Hobson's choice if ever there was one.

In understanding why queers might not tell anybody, it's crucial to understand the particular cultural and religious history. I have had an Indo-Canadian client say to me that I should sponsor his Indian partner and his Indian partner's wife, because in India it is standard practice for gay men to marry and to have relationships on the side with the knowledge of their partners. I have had a lesbian from China tell me I am the only person she has ever told in her life—she is sponsoring her lesbian partner—and the only person she will ever tell. The difficulty with the intersectionality is that if you're the queer person, you end up in a very, very small and lonely place.

In terms of dealing with that intersectionality, the most important thing the board can do—in particular in its training—is to be trained about intersectionality. That's number one. Number two—and to my mind this is absolutely crucial—is that board members should literally make the thought leap that I invited you to make today, and that is to try to think beyond your experience, beyond your point of view, and from the point of view of the claimant for a period of time.

That's a very difficult thing to do, but it is actually the only way to understand some of the actions of the claimants you see and evaluate. If you think of sexual orientation or gender identity as something that is fixed, then the fact that somebody was apparently straight in their home country and is now saying they're gay is problematic. If you understand why people make those choices, the problematic nature of it goes away.

In answer, training about how intersectionality works, and the board taking a real effort to look at things from the point of view of the claimant in that training and in their work are huge steps forward.

● (1130)

Mr. Gary Anandasangaree: Thank you.

Ms. Robinson.

Ms. Cheryl Robinson: Right now there is reference to this in the guidelines. For example, both the Courchesne guideline for women facing gender-based violence and the SOGIE guidelines refer to the fact that you can't make assumptions, and that there may also be cultural norms in play that guide a person's actions. We have resources in the guidelines.

It's inconsistently applied, though. From my perspective, part of it is that some of the board members don't really know how to use those guidelines. They know they're not supposed to say certain things, but how does that really play out in practice?

That's where situational, scenario-based training and case studies would really help, because they are a way of leading people to consider both aspects and to play out what they would say to a claimant who is alleging a certain thing. It would hopefully stop or at least limit questions like, well, why wouldn't you tell your wife? Why would you get married if you're gay? I've heard this repeatedly: why would you go back to your abuser, or why wouldn't you just run away from your husband? A lot of these are just tropes that we see across gender-based violence or sexual orientation claims, but at the same time the cultural element will help inform that.

Some of it is that there is no follow-up or reinforcement on this. They're given guidelines, but then they don't necessarily know how to apply them in practice.

Mr. Gary Anandasangaree: With respect to the current cohort of IRB members, from the order in council, would you say that most of them have been trained and have the background with both gender-based violence, as well as an understanding of the SOGIE principles?

Ms. Cheryl Robinson: I would say that they certainly have received some level of training and some do amazing jobs in respecting that training and how to consider the guidelines, but it is inconsistent. Even with great board members, I've had them ask these kinds of questions that they were told they were not supposed to ask in the guidelines. I think that is simply, again, a lack of follow-up training and discussion of how to apply them.

The Chair: Thank you.

Go ahead, Mr. Maguire.

Mr. Larry Maguire (Brandon—Souris, CPC): Thank you, Mr. Chairman, and thank you to the witnesses today as well.

I just wanted to check with you both and see how you feel about the conflict of interest process that we're doing.

There have been concerns raised about the fact that the complaints that are being dealt by the chairperson of the IRB might be seen as a conflict of interest because, first, they're a colleague and second, they're responsible for the reputation of the board. We've studied other quasi-judicial bodies, in regards to handling complaint systems, whereby it's better to...such as, against the justice of the peace, with a panel comprised of judges of other courts, chief justice, and lawyers that are put in place to do that review. Do you think that something similar for the IRB would remove the conflict of interest situation?

Ms. Cheryl Robinson: Yes. I think that it's the right response. Even with the best intentions, I think anybody in that conflict of interest, which the chairperson would be in, would struggle to make completely impartial decisions.

Mr. Larry Maguire: If you go that route, for a justice of the peace, as an example, they have a publicly available, clear list of consequences that are available as well, so that they know what the results will be if there's a misappropriation. They include a warning or reprimanding, ordering the justice of the peace to apologize to the complainant, or even be removed from the office. Do you think that this would be an appropriate list of consequences to have for IRB members as well?

● (1135)

Ms. barbara findlay: I apologize if I'm interrupting, but I can't tell who you're looking at, so I'll just leap in.

I think that, unless the members know what the consequences are and know that they're publicly accountable for that behaviour, then in particular, the treatment of issues like sexual orientation, gender identity, or intersectionality becomes constructed as something about the way you do your job, as opposed to something which is part of the standards of how you do your job.

Mr. Larry Maguire: Thank you.

Ms. Robinson, do you have a comment on that as well?

Ms. Cheryl Robinson: I would concur with that. Also, I do think that, if a complaint is made and there is no sort of consequence when there has been inappropriate behaviour, what good does that complaint do? It doesn't help the complainant and the refugee claimant at all.

Mr. Larry Maguire: Do you agree that the list of consequences should be published well ahead, when the selection process is being done?

Ms. Cheryl Robinson: Yes. Absolutely.

Mr. Larry Maguire: The primary issue that has come up time and time again is that the IRB has used partisan appointments rather than maybe picking the most qualified candidates. Can you give us any recommendations on how to make these appointments less partisan?

Ms. Cheryl Robinson: Right now, the refugee appeal division, for example, is made up of GIC appointments. I think part of the rationale behind that might be because they're looking for more experienced members to join the RAD. I guess this would depend on maybe changes to the regulations, but the same public service appointee process for the RPD could also be applied at the RAD if the concern is partisan political appointments.

Mr. Larry Maguire: Are you concerned about the case backlog in the IRB? I only raise this because I want your comments on the length of time for some of the hearings, since the wait times for some of the hearings is several years, in some cases. Do you think it will have an impact on the asylum seeker's ability to recall the details that will determine whether or not they have a positive outcome in their future hearings?

Ms. Cheryl Robinson: I think it's had two opposite effects. I had a recent claim where there's been a delay of about a year and a half. The person was unable to tell an officer at the airport—the stranger in a bulletproof vest—that he was gay; but at the board he had no problem explaining it. That was because of that year that he'd been here in between. For him it made it easier because he realized it's okay in Canada. That was also a sticking point for the board member. The board member said, "Well, why is it so easy for you now?" It's funny how that passage of time can both help and hinder.

When it comes to gender-based violence claims, that constant state of limbo can be extremely wearing, and it can be re-traumatizing. In many cases, for that person it can actually weaken the claim because a year, two years.... I have one that's now six years because we've gone to the Federal Court and back. How can she actually prove that the person is still looking for her? It's not the state; it's an individual. It's going to be very difficult. Passage of time is not beneficial in that manner.

Mr. Larry Maguire: Thank you.

Ms. findlay, do you have a comment on that as well?

Ms. barbara findlay: I think the delays are very difficult because, for the claimants, the degree of uncertainty coupled with their ever-growing realization of what's going to happen to them if they go back to their country of origin, having made a claim on the basis of sexual orientation, is progressively debilitating.

I also agree with Ms. Robinson that sometimes people who come here don't even have a self-concept as being queer—any flavour of queer—because there are no social mirrors reflecting that as an option in their countries of origin. They come to a sense of themselves as gay, lesbian, or transgender once they get here.

● (1140)

The Chair: Thank you.

Go ahead, Ms. Kwan.

Ms. Jenny Kwan (Vancouver East, NDP): Thank you very much to both of our witnesses.

I'd like to just follow up on the issue around follow-up in terms of training, in the case of a member who's had a complaint lodged against him or her, and the complaint is found to be valid, and later on they're subject to training. As we heard from Mr. Aterman, there is no follow-up to determine how effective that training has been, other than a year-end evaluation of that particular member's evaluations. Does this make sense to you? If not, what should be done?

If I could just get quick comments from both of you, I would appreciate that.

Ms. Cheryl Robinson: I find that concerning because, basically, you're making refugee claimants who come after the complaint and training into guinea pigs to see if the training took effect. I also think that if we looked to other bodies, for example the law society, we'd see that when people are reinstated they're not just put in without any supervision. There are terms for supervision and follow-up. There is a feedback mechanism for them, as well, which can be part of the terms. I think that would be more appropriate after a complaint.

Ms. Jenny Kwan: Thank you.

What do you think, barbara?

Ms. barbara findlay: I agree. I think there needs to be some structured follow-up and evaluation. I certainly think there needs to be some sort of exam or evaluation at the end of the training so that the board can be satisfied that its member has actually absorbed the information; and the member subsequently should be evaluated against the training. It's a problem in all areas of judicial education.

Ms. Jenny Kwan: Thank you.

I'd like to ask a question around the issue of independence. Under the current system, even the revised complaint process, there is not complete independence because ultimately it is the chair who makes the decisions around these complaints. Do you think that's appropriate? If not, how would you like to see it changed?

That's a question for both of you as well.

Ms. Cheryl Robinson: I think that there is a conflict in that process and that it should be an independent decision-maker making that final call on the complaint, not the chairperson.

Ms. barbara findlay: We agree, particularly in the refugee context, where people come from countries where one hand washes the other. If the complaint process is to have any credibility, it has to be separate.

Ms. Jenny Kwan: Regarding outstanding complaints, we now have situations where if a complaint has been lodged against a particular member and that member has left the IRB for whatever reason, the complaint is simply dropped. For some individuals that is a concern, because they never receive an outcome regarding their complaint.

Do you think the IRB should find a mechanism by which they can ensure the complaint is heard so that there can be closure for the complainants and the issues they brought to the table?

Again, the question is for the both of you, please.

Ms. Cheryl Robinson: I would say yes, but I think that's where an independent decision-maker and independent complaints body might have that ability, as opposed to the IRB, which seems to be limited to the mandate and when that person is an employee. I think that would point to why an independent complaints mechanism would be much better as a final decision-maker.

Ms. Jenny Kwan: Thank you.

Ms. barbara findlay: And the results of all of the investigations and the disciplinary consequences, if any, should be made public—not necessarily tied to individual board members, but available to the community of practitioners, other IRB members, and claimants... what the standards of professional behaviour involve.

Ms. Jenny Kwan: With the current process it is nearly impossible to fire a member. The process is so onerous that for all intents and purposes it's not feasible.

Do you think there should be changes so that if you found a situation where an IRB member was so egregious in their practice, there would be another way they could be fired?

● (1145)

Ms. Cheryl Robinson: Yes, I think it would be appropriate. One of the things we are seeing now, as a result of the public pressure through newspaper articles and Global News, is that some of the most problematic board members have left or have resigned. I don't think it's the best situation that this is the way problematic board members leave or are removed.

Ms. Jenny Kwan: Ms. findlay?

Ms. barbara findlay: I lost the question there, Ms. Kwan.

Ms. Jenny Kwan: I was asking about the process through which a board member can be dismissed. As it stands right now, it's almost impossible to do.

Ms. barbara findlay: The message that such a complicated process sends is not that you have a fair process, but that you want the appearance of a fair process. That's the worst of both worlds. You have to make the process simple enough and with enough consequences that people understand it's worth using and is a guarantee of the integrity of the board as a whole.

Ms. Jenny Kwan: We were talking about the delay in claims, and one of the big problems is the lack of resources within the IRB. Currently the IRB is accumulating 1,200 cases per month in backlog. Even with the injection of the dollars in this 2018 budget, it would not clear even half of the existing backlog. It would not clear the over 40,000 cases that exist in the system; it would deal with only half of them. We know that the accumulation of cases will continue to bring pressure on the IRB.

From that perspective, while we're not necessarily talking about budgetary items, the implications for claimants are huge. How to rectify that—

The Chair: I'm afraid you're over time.

Ms. Jenny Kwan: Would you agree that it requires an increase in budget?

Ms. Cheryl Robinson: I think it's a combination of that and the fact that there are administrative inefficiencies at the board. They have an expedited process, and "expedited" is a complete misnomer. It's not a faster process. Claims that should be based on objective evidence, that should be easily decided....

I have one that started off in expedited, and then a hearing was scheduled. Then the hearing was cancelled. Then another hearing was scheduled. The day before the hearing went ahead, we were told it was going back into expedited, and we got a decision four months later. There was absolutely no continuity in how that process was applied.

The Chair: Thank you. I do need to cut you off. We're quite a bit over.

Mr. Whalen.

Mr. Nick Whalen (St. John's East, Lib.): Thank you for coming either remotely or in person today.

Many of the counsel that we've had appear before us have sort of had a uniformity of view with respect to many of the issues. One of the lawyers that was invited, Ronald Ellis, was unable to attend, but he did submit a paper. Some of his positions go against yours. I want to flesh out some of his logic. Maybe you can help comment on it.

With respect to the complaints process and the independence of it, he's actually in favour of it. In paragraph 19 of his submission, he says:

> I am impressed with the internal complaints process that was established by the IRB in December 2017 and it seems to me to be the most sensible to allow it to function for some period of time, and to consider how it might be adjusted after that performance experience has been evaluated.

It's primarily for three reasons that he says it's good. Maybe he does so in comparison to an independent process. He says:

> If every adjudicator could be exposed to a public, external review of their personal performance...that would be destructive of the institutional morale and team environment....

That's his first one. His second comment is that "the proposed external complaints process...has a number of obvious problems of its own. Who, for example, would administer it...?" How would it be administered? What would the cost be, especially when there have been only 170 complaints over the last 10 years and only 21 founded complaints? I think even last year all of them were against not the GIC-appointed folks, but the government civil service-appointed folks.

Then I guess the third point that Mr. Ellis makes is that the IRB chair, who is making the decision—and most of the complaints are, "Well, the chair..."—is actually the person who most wants the IRB to be functioning and to be seen to be functioning. That's the chair's job. The chair is not biased. In fact, the chair's interests are wholly aligned with the preservation of the administration of justice.

Maybe you can comment first, Ms. Robinson, and then you, Ms. findlay, on why you feel that Mr. Ellis' comments are valid or invalid.

● (1150)

Ms. Cheryl Robinson: To go back to the first point that you said he made, that it would destroy the morale of the board, a judicial council, JPs, they are all subject to this kind of an independent review. I can't speak to their morale, but they seem to continue as an institution without any problem. I don't necessarily see that as being a hurdle in having an independent body.

In terms of the cost and who would constitute that, I think it's certainly a concern, but I don't think it's a bar. I think it's something that maybe needs to be considered more.

Sorry, what was the last point?

Mr. Nick Whalen: The third one is that, in fact, the chair is the person whose interest is most aligned with not only the preservation of the board, but also that it be doing justice and be seen to be doing justice.

Ms. Cheryl Robinson: My concern with that is that even the most well-intentioned person who is the head of an institution is going to want to preserve the reputation of that institution as well. Even though there hasn't been a huge number of complaints, part of that—just from my own experience and conversations with other practitioners—is linked to that it hasn't been seen as an open, transparent, or effective process. It's not because there weren't issues, but because we didn't really see it as something that led to any useful results.

Mr. Nick Whalen: Are you saying that practitioners are looking to use the process as an extra avenue to advance their clients' claim or to delay or to maintain a person in the country while complaints are—

Ms. Cheryl Robinson: No, that's not what I was saying.

What I was saying is that the complaints process didn't seem to be effective, and that what happened more recently when complaints were brought against board members was that they continued to hear some claims or claims were put aside and sat until something was dealt with. It's not about trying to use it as an advocacy tool. It's about making sure that, if a board member has not behaved in an appropriate manner in a hearing, there is a mechanism to complain about that member's actions.

Mr. Nick Whalen: You also don't want them to be hearing claims while a complaint is against them. That's sort of what the insinuation of your last comment was.

Ms. Cheryl Robinson: I think it would depend on each individual example in terms of whether there are a lot of complaints—

Mr. Nick Whalen: Okay. Thank you. Sorry, I have just such a limited time.

I'd love to hear from you on those three points as well, Ms. findlay.

Ms. barbara findlay: I think the chair has a variation on a conflict of interest because on the one hand they want their board to have a good reputation, which means they don't want to highlight or be publicizing issues where board members have not met a standard of care in relation to issues of this kind. They are most able to maintain the integrity and the assessment by the public of integrity if the process is external to the board so that is taken away from the chair. The point the letter-writer wrote about, the small number of complaints, suggests to me that the process is so daunting people don't complain.

I think also the nature of the complaint process, for example, in the manner in which they treated complainants, is generically different from complaints, for example, that somebody ignored evidence or fell asleep during the hearing, or those kinds of things, and they should be dealt with by external bodies.

I don't think this is rocket science. I think institutions including the police, the law societies, the judicial education system, universities, institutions in general are having to figure out how to deal with it.

● (1155)

Mr. Nick Whalen: Thank you.

Another area of the testimony that seems to be.... Mr. Ellis comes at it a different way, is with respect to the tough questions that adjudicators are expected to ask. At least at the appeal level, it seems to be putting the panels in both the position of arbiter but also in the position of prosecutor.

I'm wondering whether or not it should be really, at least with respect to the appeals, the panels who are the ones who should be asking the appellants, or whether or not it should be counsel for the government who are going to be asking these hard questions so the person who's both asking the question and the person who is determining whether or not the question is leading, or whether or not the question is being honestly answered, should not be the same person.

What are your thoughts on that argument that there should be counsel for the government?

Ms. Cheryl Robinson: When you're referring to appeals, do you mean the refugee appeal division?

Mr. Nick Whalen: Yes.

Ms. Cheryl Robinson: Most of the refugee appeal division is going to be a paper-based process so you aren't going to have a hearing in many situations. I think it can be challenging to strike that balance between asking the questions that are necessary as a board member and also listening and making a determination on it, but that's the cornerstone of reverse-order questioning that informs the refugee protection division.

The rationale that the courts upheld all this is because it's not an adversarial process. I think this is part of what I was speaking about. There has to be a balance between the ability to ask difficult questions, but in a respectful and inclusive way, because I don't think it's necessary to ask minutiae about someone's sexual assault.

The Chair: Thank you.

Mr. Maguire.

Mr. Larry Maguire: Thank you, Mr. Chair.

It has been suggested by witnesses in this committee that maybe we have too many people with law enforcement backgrounds. It has also been stated that perhaps personal characteristics...that applicants are more important than substantive knowledge on some of these issues.

What's your view? To what extent should the IRB members be familiar with the immigration and refugee law upon being appointed to the board?

Would you like to lead that, barbara?

Ms. barbara findlay: I would say first of all that the board itself should reflect the communities of people who come before it. I am particularly concerned today not that they necessarily know the law, because decision-makers often don't, but that they have a grounding and an understanding in things like how you are going to ask someone about their sexual activity in a manner that is likely to elicit a truthful response.

That's my bigger concern at the moment.

Mr. Larry Maguire: Thank you.

Cheryl.

Ms. Cheryl Robinson: I agree. I think it is a big concern, the ability to ask the questions respectfully and to obtain the information. In terms of application or at least knowledge around the law, I do think it is important that there is a more base-level knowledge. I don't necessarily think that means you have to hire lots of immigration lawyers to make the determinations, or all CBSA officers, but I do think there needs to be more consistent training related to it because it is a very legalistic area. There is a test that has to apply and principles that have to be followed. The board members need to know it to be able to ask the questions.

Mr. Larry Maguire: I understand that your view is that the appointees should have previous formal training in law, but also, as barbara has indicated, they need to understand the backgrounds of the people as well.

Ms. Cheryl Robinson: I don't necessarily think that everyone needs to have formal training in law before coming to the board, but they need to be able to learn and have an ability to uptake the information they need.

Mr. Larry Maguire: A report came out last week suggesting it might be more efficient to have the initial decision on a refugee claim made by an IRCC officer—as opposed to an IRB officer—using the IRB just for the appeal process. The argument is that this is the same process for all other immigration claims. With initial decision-making and the appeal process in the same agency, there's a potential for a serious conflict of interest. Can you expand on your thoughts on that proposal?

● (1200)

Ms. Cheryl Robinson: For the refugee population, I don't think that's an effective remedy. An IRCC officer would have to go through the same training, sensitivity training and training on how to ask these questions, as any other IRB member. There is an issue of a lack of independence. I'm thinking in terms of spousal applications. That first decision is made by an IRCC member—an officer at a visa office—and it still gives rise to a significant number of appeals that are heard at the IAD. I don't think that's a remedy; it's just shifting the problem to a different body.

Mr. Larry Maguire: barbara, do you have a comment?

Ms. barbara findlay: I concur.

Mr. Larry Maguire: Thank you, Mr. Chair.

The Chair: We've come to the end of our time. Mr. Tabbara, you can have a minute or two from Mr. Maguire.

Mr. Marwan Tabbara (Kitchener South—Hespeler, Lib.): I was going to speak to what my colleague mentioned on the article, but I have limited time so I'll go straight to Ms. Robinson. Maybe you can follow up and collect all of the suggestions you made to this committee.

Of your suggestions, number three is how to apply a psychological approach, and one of your last suggestions is about a lack of follow-up training. Could you elaborate on what you meant by those suggestions?

Ms. Cheryl Robinson: I think that the training has to be better trauma-informed, and that means really understanding. There are a lot of generic tropes that are applied at the board. There is this idea that somehow trauma is going to sharpen your memory. This gets trotted out a lot in questioning. If it's so important, why wouldn't you remember it? To me, that speaks to a lack of understanding of how trauma actually works on the memory and the ability to verbalize. Having some training in that, and working with mental health professionals who work with individuals who have experienced trauma, would help.

We often put pieces of evidence in psychological reports. How effective they are and how much they're taken up by the board members gets a variable response. Learning how to read...what that might impact, or how that applies to an individual claim, would be helpful.

The Chair: I think we have to end there. Thank you.

Thank you very much to the witnesses; that's helpful.

Ms. Kwan.

Ms. Jenny Kwan: Thank you very much.

Mr. Chair, before you adjourn this section of the meeting and go in camera, I'd like to just raise two issues of questions of privilege if I may. One is related to this particular study with the IRB. You'll recall, Mr. Chair, that on February 27, 2018, Mr. Aterman was before this committee and I asked Mr. Aterman to provide the interim third party report by Neil Yeates. It is said that the report is comprehensive and that it would have potential content within it that addresses the issue of training, appointments, and complaints. Mr. Aterman responded by saying that he had to go back and check and see whether or not he could provide that report to us.

Since that time, we have received a written response from Mr. Aterman on the undertaking and there is no mention of this report or this request. I just want to note that if an appointed third party reviewer directly provided a report, interim or otherwise, to a quasi-judicial body at arm's length of the government, it is unrealistic to consider that this document is protected by cabinet privilege and it's unacceptable for the document to be outright ignored at the request from this committee as an undertaking.

If cabinet privilege is to be cited as the reason why this report can not be provided to the committee, then I think committee members deserve an explanation as to how that is indeed deemed to be cabinet privilege.

I'd like to get a response from Mr. Aterman on this request. We've had situations before where IRCC officials just outright ignored the undertakings given to them from committee. I just don't think that's appropriate and frankly it impedes my work and I would say the committee's work as well.

● (1205)

The Chair: I don't believe I read anything that cabinet privilege was being invoked. I haven't heard that. Would it be okay if we instructed the clerk to go back to the IRB and ask for a clarification with respect to our request?

Ms. Jenny Kwan: Yes, I would like to have that. On February 27, when I requested a copy of this report, Mr. Aterman's response was, "This is a report; it's advice to the minister. It's been shared with the board. To be perfectly frank, I'm not sure whether it's the board's to table."

I then made some arguments about why it should be and precisely because it was given to him and not to the minister from a third party. Therefore, in my view, it should fall outside the realm of cabinet privilege. It's a report that's been shared with the board and because we're studying this very issue, the board should be able to table this report to us for our review.

The Chair: Would it be okay if we consider some motion from you to request the clerk and the chair to request an explanation with respect to this report from the IRB?

Ms. Jenny Kwan: I can make it official, Mr. Chair, if that's what you prefer, to move this as a motion.

The Chair: It would read something like "in relation to the study on the IRB complaints...process, the committee send for this document from the IRB and that this document be provided to the committee by such and such a date". We can make a motion like that. That's not quite the motion I had in mind. It would be a motion to ask us to first ask for an explanation.

Ms. Jenny Kwan: No, sorry, it would be first to ask for the report and if it's not provided, then there needs to be an explanation as to why.

The Chair: Okay, that's fine.

I'm happy to entertain. That motion would be in order if you want to make that motion.

Ms. Jenny Kwan: I would make that motion, Mr. Chair, because the undertaking has been given to the IRB and their job is to fulfill that undertaking. They have not in their response to us and there's been no explanation whatsoever.

The Chair: I would like to put a date on it.

Ms. Jenny Kwan: The date ought to be that before we actually deliberate on this committee report. Otherwise, we would have missed the boat, if you will, in not getting the information. I'm not sure what the date would be but that would be the date I would use. Maybe it should be just to say that prior to the committee considering the draft report.

The Chair: Since we haven't set that date yet, we have a tentative schedule, is a week reasonable, 10 days, two weeks?

Ms. Jenny Kwan: Why don't we just put in the motion "prior to" the committee considering the draft report, whatever that date is.

The Chair: Sure. We expect to be considering that draft report in June, so by early May. I'd just like a date, so May 1.

Ms. Jenny Kwan: May 1 would be fantastic. I would accept us receiving the report by May 1.

The Chair: They, obviously, can decline, but they will tell us.

(Motion agreed to)

Ms. Jenny Kwan: On another point of privilege, if I may, this dates back to another study, Mr. Chair, on February 15, when the committee had the deputy and the minister at this committee.

At that meeting I had asked for the deputy to provide us the details on the consultation process with respect to the caregivers review. Ms. Marta Morgan responded:

> The nature of the consultations has not yet been established, but we will make sure that committee members are aware of it so that they can provide that information to caregivers. We will also directly provide information once we have a consultation process set out.

Mr. Chair, then we received a response from the IRCC officials to my question on the consultation process. This is the answer that I got, and let me put this on the record:

> Immigration, Refugees and Citizenship Canada (IRCC) is undertaking consultations in March and April 2018 to inform the development of permanent residence options for caregivers, as well as considering input provided in the past.

That is the information that was provided with respect to the consultation process.

I have since found out that in fact consultations have taken place. Not only was this committee not informed, but also that information was so secretly held that many people didn't know about it. There were, at least to my knowledge, six consultation meetings that took place in Toronto. There was a consultation meeting that took place in Ottawa, which I was informed about by a stakeholder, and I made a request to the minister's office to see whether or not I could attend that consultation meeting. I was advised, or my staff was advised, that it was not a consultation meeting and that my request to attend that meeting was declined.

Further pushing this issue then, subsequently, consultation meetings were held in Vancouver. In fact, yesterday a consultation meeting was held in Vancouver. I was notified of that consultation meeting on April 10. I wasn't notified that I could attend that meeting until late Friday afternoon of that week.

I attended that meeting yesterday. I showed up at the location that was emailed to me. The location had changed. It had gone to a different location. I had to go to another location in order to make that meeting, and then through that process I found out that there was another meeting that was scheduled that afternoon as well as one this morning.

My point is this. A clear undertaking was given to the IRCC officials, to the deputy no less, who had committed to this committee that she would provide this information to all of us, so that we might inform the caregivers of the process, so that they could engage in this process. That was not done, in my view. The answer that was provided to me and provided to the committee to say that consultations would take place in March and April is frankly meaningless.

I am disturbed about this pattern of behaviour from officials, who seem to think that it is okay for them to ignore the request of committee members with their undertakings. I don't think this is an onerous request. It's simply to ask for basic information on when consultations would be taking place, and none of that was provided.

I would like to have an explanation as to how this will be rectified in the future. It is not acceptable. I hope it is not acceptable to you either, Mr. Chair.

● (1210)

The Chair: I think your point is well heard.

However, I'm going to say that, in terms of privilege, the speaker is quite rigorous in reminding us as members that we have the right to ask questions. But if an answer is given, the speaker does not judge the answer. We may not like the answer, but an answer was given. On this one, I think your point has been made. It will be shared, obviously, through our record of proceedings. However, I don't believe that is a breach of privilege. The committee could decide otherwise but I do believe that an answer was given. We may not like the answer, but it has been heard.

That is how I would handle that one.

Ms. Jenny Kwan: Thank you.

With all due respect, Mr. Chair, I would challenge that. We have had experiences in the past where officials would provide an answer that was frankly not an answer. In a committee setting the undertakings are different and officials are responsible for providing accurate information to committee members to answer the questions. Vague answers are entirely inappropriate. To me, that is a breach of my privilege. It actually limits my ability to do my job. My job is to ensure, in part, in the study of caregivers, that they know what is going on so they can provide the input. The late notice I got for the one meeting, that I was finally advised of, was too late for many of the caregivers to even attend. It was not possible or feasible. How is this a consultation process? It's meant to be helpful, to ensure the government receives the information so that they can come back with the best policy to address the concerns impacting caregivers.

With all due respect, Mr. Chair, I would challenge that ruling.

The Chair: We have two things. First I would say that once there's a challenge to the chair, I will allow the committee to deal with it. It's a committee decision, whether you uphold my ruling on that.

The second part of that would be just to remind the members that there is a difference between a committee making a motion to request a piece of information, which is voted on by the committee, and a member individually asking a witness for a document. They are different within our parliamentary procedure. We don't have a motion on that. That is why I have ruled that I have heard the concern raised by the member. I think it's a concern that goes directly to the department, as opposed to through the committee, but I am very prepared to accept a challenge on that ruling.

● (1215)

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): I have a point of order first. This is just a housekeeping thing. Before we continue, because this could go on a little bit, should we dismiss our witnesses? They've been very patient. I'm sure they have other things to do.

The Chair: Yes, and I had thought of that before I.... This may be the most interesting thing of your day, but it may not be.

So with thanks, you are very welcome to stay—it's a public meeting—and you're very welcome to leave. That is up to you.

Thanks, Mr. Schmale.

I would need a motion to entertain that my ruling be sustained.

Mr. Anandasangaree.

That's not debatable, so do I have to vacate the chair? I often do. I could.

A voice: No.

The Chair: Okay, I usually do, but I won't today because the vice-chair isn't here, and the second vice-chair is the object of the attention.

All in favour of the motion to sustain the decision made by the chair?

(Ruling of the chair sustained)

The Chair: Ms. Kwan.

Ms. Jenny Kwan: Thank you very much, and Mr. Chair, I'd like to move a motion, please.

I'd like to move a motion that the department officials be requested to come back to the committee and provide an explanation with respect to my request on the undertaking.

The Chair: We have a motion on the floor that may be debated now.

Ms. Alleslev.

Ms. Leona Alleslev (Aurora—Oak Ridges—Richmond Hill, Lib.): If I understand correctly, we're looking to understand the consultation process. Perhaps we could make a committee request to outline what the consultation process is, when they plan to have a report, how many people they plan to consult, and what the key areas of consultation are.

Are those some of the things that you were looking for? Rather than having them come back to committee, perhaps we could put a request in for the process.

The Chair: Mr. Whalen.

Mr. Nick Whalen: The subject of the next meeting is scheduling of business, inviting witnesses, and determining what our order is going to be. Right now, I would like to go in camera.

Ms. Kwan's motion is tabled, but there are dozens of motions on committee business that have been tabled. I don't think hers has the notice or is bilingual or anything, so I don't think we need to debate it now. We can just move it to our next meeting.

The Chair: I think the motion is in order. It may be the mover's decision now whether she would like to continue this, but because it followed out of my ruling, I did entertain the motion. That's fine. It is a valid motion, and I think the committee should dispose of it as we are able to.

Mr. Maguire.

Mr. Larry Maguire: Mr. Chair, the only reason I want to have a say here is that even before the vote it would have helped...but I believe my colleague's request comes from the fact that the minister and the deputy minister, in the meeting that she referred to, said they would provide this information and it hasn't come forward. To me, it's pretty simple and straightforward. That's her request, and I put that on the record.

I support her on that.

The Chair: Mr. Anandasangaree.

Mr. Gary Anandasangaree: I move that the debate be now adjourned.

The Chair: Okay. We have a motion that the debate be now adjourned, which is not debatable.

(Motion agreed to)

The Chair: The debate is now adjourned.

Mr. Anandasangaree.

● (1220)

Mr. Gary Anandasangaree: Chair, I move that we continue our business as per our agenda. I believe we have to finalize some matters with respect to committee business.

The Chair: All right.

Is this on the motion to continue the business?

Ms. Jenny Kwan: I would like to speak to it.

The Chair: Okay. You're first.

Ms. Jenny Kwan: Thank you very much.

I find this very troubling, for the committee member to try to actually shut down another committee member in engaging in what I think is an important matter for all of us, not just for this committee, frankly, but for all Canadians, and to disallow proper discussion to take place in the public realm.

I would not support this motion. The reason I won't support it is because I would like to move three other motions, and I would like to point out what they are.

One of the motions I want to move and put a notice of motion on the public record is that pursuant to Standing Order—

The Chair: I'm going to call this out of order for two reasons. One, we have a motion on the floor and are not allowed to move another motion that is related.

Ms. Jenny Kwan: Sorry—

The Chair: I will not entertain other motions.

Two, we are not in committee business. I would require that any motion being presented would have followed the due process of being sent to the committee with due notice, in two official languages as is important to this committee. I would request that the members follow that procedure to submit their motions in due order.

I would entertain a motion related to a point of parliamentary privilege directly following from it. However, this does not directly follow from that.

We have a motion on the floor and it is the only motion we can deal with at this time.

Ms. Jenny Kwan: Mr. Chair, speaking to that issue on the point of order—

The Chair: Unless you are raising a new point of order, we are only speaking on the motion at this time.

I am looking at Mr. Sorenson for—

Ms. Jenny Kwan: Mr. Chair, I am speaking to the motion. I was not moving a motion. I was simply raising an issue to say that I am speaking against this motion because I was going to put a notice of a motion for the committee's information.

The notice of motion that I would have liked to have put, had this motion not been tabled, and it has not yet been passed, therefore I can speak against it, is this—

Mr. Gary Anandasangaree: On a point of order, Mr. Chair, I believe that point is out of order. There's debate right now on a particular question to continue the agenda.

The Chair: I would agree with that. There are ways people try to circumvent that by saying they are speaking about a motion. If they are not speaking about the motion, I would say that they are out of order.

I have Mr. Maguire now.

Mr. Larry Maguire: Mr. Chair, my colleague is not speaking about a motion. She's talking about a notice of motion. There's quite a difference in regard to the affairs of the committee, and I can't believe that the government wouldn't allow discussions on the notice of motion. It's a notice of motion. There has been no motion put forward.

If she has three more notices of motion that she'd like to put forward, I'd like to hear what they are. We're not voting on them or anything today at that point. I can't understand what the hurry is to close our business so that we can be in camera on that. I think we owe it to my colleague to hear what her notices of motion are.

The Chair: I am just clarifying that notices of motion in the middle of a debate on a motion are appropriate. Just give me one moment to clarify this. Then I have two speakers.

I am interpreting this standing order as saying very clearly that unless the notice of motion relates directly to the business at hand, the normal rules of the committee would be required in following the submission of a notice of motion. The clerk has provided me with that information.

I believe that it's inappropriate to comment on a notice of motion that's not been made in the debate where we instead of...as a backdoor way of changing the debate.... That would be my ruling: that, absolutely, people can comment on anything they want to in a debate as long as it's relevant to the matter at hand. We have the matter at hand that we proceed to committee business, which was given to all the members, and that we would continue to do the work of the committee, as the committee had already decided that we would do. I would rule that commenting on a notice of motion that has not been made is not part of the business. It would be my ruling.

I see that many people have their hands up.

Mr. Anandasangaree.

● (1225)

Mr. Gary Anandasangaree: I'd like to call the question, Mr. Chair.

The Chair: In committee, we really can't do that. I like the sentiment, however, as long as people have something new to say with respect to the debate, which is on the point that we continue to the business that was provided in the agenda.

I have Ms. Kwan and Mr. Maguire.

Ms. Jenny Kwan: Thank you very much, Mr. Chair.

All right. I would speak against this motion, Mr. Chair, because I think that this is an opportunity that committee members rarely ever get: to engage in a public session to raise issues that they would like to perhaps turn the committee members' attention to.

Given that I'm not allowed to give notices of motion, I'll tell you that one thing, and the reason why I'm opposed to this motion, is that I think the committee should be paying attention to the current situation with respect to the influx of irregular border crossings and asylum seekers seeking to enter into Canada through the southern border, Mr. Chair.

Mr. Gary Anandasangaree: On a point of order—

The Chair: Mr. Anandasangaree.

Mr. Gary Anandasangaree: —relevance, Mr. Chair. This is with respect to going onwards on our agenda. We have agendas prepared for us for every meeting. We have to follow that agenda in order to meet very specific timelines for some of the discussions that we're having.

I believe that Ms. Kwan is once again trying to filibuster, and frankly, I think this is something that can be discussed under their agenda item. Or if she wants to bring it forward at the next meeting, she's welcome to do so, but I think that at this point it would appear that she's filibustering. I believe that we do have very important business to do in order to set the study at hand in the right way for the next several weeks.

The Chair: Thank you.

Mr. Maguire.

Mr. Larry Maguire: Thanks, Mr. Chair.

We asked earlier for information in regard to the study we're doing, and we don't know—or I don't know—at this point whether the notices of motion that Ms. Kwan is putting forward are relevant to more information on the study that we're doing or not.

To your comment earlier that we can't comment on a notice of motion until it's put forward, we don't know what the notice of motion is going to be, so it is really hard to comment on it, but I would also say, in the fairness of making—

Mr. Gary Anandasangaree: On a point of order, Mr. Chair, relevance, because right now there is—

Mr. Larry Maguire: There is relevance here.

Mr. Gary Anandasangaree: Well, there is a specific motion right now to continue the agenda. I believe that all the discussion that's now taking place is with respect to another matter altogether, and it's irrelevant to the conversation at hand.

Mr. Chair, I urge you to move forward on this, take a vote, and continue on the agenda.

The Chair: I can't move to a vote as long as I have people discussing the motion, which is that we continue with the business of the committee that was meant to follow a timeline to help us get our work done. I believe the committee has agreed to this timeline.

Mr. Maguire.

Mr. Larry Maguire: I'd just like to make a suggestion, Mr. Chair, with regard to getting on with the committee's business, so that we can hear all of the business that may come before us.

I would suggest that Mr. Anandasangaree withdraw his motion, and allow these issues to go forward.

The Chair: There is a motion on the floor, and we have to deal it.

Ms. Kwan.

Ms. Jenny Kwan: Speaking to the motion, again, frankly, to be very clear, Mr. Chair, I have no intention whatsoever to filibuster this committee. In fact, if anything, the committee members from the government side are trying to impede the work that is very important for this committee to do.

From that perspective, just because someone offers a different opinion than that of the government members, and want to debate that, they deem that to be filibustering. Is that to say that we all have to walk like sheep, and agree with the government, and unless we don't, we're filibustering somehow? That is completely inappropriate.

To the debate around moving forward on committee business, this relates to committee business. The issue I want to bring forward relate to committee business. I want to bring it forward, but not in an in camera session. My intent is that this committee needs to study the issue of the safe third country agreement, particularly the issue of asylum seekers who are crossing over from the United States right now. We know that there's been a tremendous impact with respect to that and continues at this very moment. That, to me, is committee business that falls within this realm. Yet, we have a situation where we have a committee member who does not want to have that committee business discussed in a public setting.

● (1230)

The Chair: Mr. Whalen.

Mr. Nick Whalen: Thank you, Mr. Chair.

The Conservatives filed notices of motion last week with respect to this. It's committee business. Whether the minister, or the deputy minister, comes is also committee business with respect to the estimates. This is all just trying to get on camera issues that other people have taken the time to do in advance. When we get to committee business, we can sort all this out. By trying to do it this way, it's incredibly inefficient and a waste of everyone's time.

The Chair: I was going to remind committee members that we do have notices of motion that have been duly received by the committee. They were received last week, and they do relate to these issues. They are still notices of motion, and we've not entertained them.

We have a motion on the floor, and that is that we proceed to committee business.

Ms. Kwan.

Ms. Jenny Kwan: Related to the issue of committee business, there are different ways of providing notices of motion. There are ways in which you can provide written notices of motion that have been done by committee members, myself included.

There are ways in which notices of motion could be put forward at committee. I've done it before, and other committee members have done it before. This is where we actually advise you, Mr. Chair, that we're going to put a notice of motion on the public record.

We're now talking about adjourning the debate to move on to committee business. Committee business includes notices of motion. I am giving verbal notices of motion at this committee. Committee members and the chair are trying to impede me from doing so.

My point is about the importance of this work that relates to committee business. It is the study itself. We know that with the increase in the asylum claims—

Mr. Nick Whalen: On a point of order, Mr. Chair.

Asylum claims again. She's raising the issue, again, of some notice of motion that will be dealt with at the next order of business if we can just get through the motion on the floor.

The Chair: I want to clarify that we do not have a motion on the floor right now to adjourn debate, which you referred to.

We have a motion on the floor to resume committee business. You could, if someone wanted to, put a motion to end this debate. We could adjourn the debate on this motion, but I haven't received a motion like that.

I have a motion that we continue to committee business.

Ms. Jenny Kwan: Mr. Chair, I believe I have the floor. I was interrupted by a point of order, and I would like to finish.

The Chair: Ms. Kwan.

Ms. Jenny Kwan: Related to committee business, you're right, it's not to adjourn debate; it is to move on to committee business. Related to committee business, I would like to put on the public record that it is important for this committee to look at the impact of the increase of asylum claims on the RCMP, the CBSA, the IRCC, the IRB, NGOs, and the provinces. These institutions provide settlement services in areas where these crossings are more frequent.

This study, in my view, should take place and should be comprised of no fewer than five meetings. The Minister of Immigration, Refugee, and Citizenship and IRCC officials should be invited to at least attend these meetings along with Public Safety Canada department officials.

This is of utmost importance given the situation—

The Chair: I just need to clarify that this is a motion.

Ms. Jenny Kwan: I am not moving a motion; I am simply saying that this is committee business that should be undertaken, seeing as this motion is to talk about moving on to committee business.

The Chair: I am going to stop this debate at this point, because we have a motion to move to committee business, which would allow you to bring committee business forward. You are actually now speaking in favour of moving toward committee business because you are actually doing committee business at this moment.

● (1235)

Ms. Jenny Kwan: On a point of order, Mr. Chair, the motion is to move into committee business in camera. It is significantly different from doing committee business in the public realm. There are opportunities through which—

The Chair: We have many options to do public realm business.

Ms. Jenny Kwan: There are opportunities, Mr. Chair, through which committee members can raise notice of motion. One is that they can submit it in writing so that it can go to an in camera session and have that discussion there. Another way to do it is to do it in the public session so it is on the public record.

The way I have chosen to embark on my notices of motion, which are now not allowed to be tabled at this committee, is to do it in the public realm. The debate we're having on this motion is to say that we should move into committee business in camera. I disagree with that, and I would like the committee to look at this issue. There are other pressing issues that I would like to bring forward.

Mr. Gary Anandasangaree: Mr. Chair, on a point of order, there has been an extensive amount of conversation about this. The fact is that we are seeking to continue the agenda as it was published to us on the website.

The Chair: You're moving to debate now, so make sure you have a—

Mr. Gary Anandasangaree: My assertion to you is that the filibustering going on.... Frankly, it is filibustering. There has been ample opportunity for all parties to bring matters to the public realm. In fact, they've done it routinely and have done it at the expense of very important agenda items we agreed to and we need to execute.

At this point I'm going to urge you, as the chair, Mr. Chair, to make a decision. At this point, it's not debate that's taking place. It is outside the realm of the debate on the substantive point, which is to continue the agenda as scheduled and published.

The Chair: All I can say right now is that I have a motion on the floor to move to committee business.

I recognize now Ms. Alleslev.

Ms. Jenny Kwan: Mr. Chair, on a point of order, I was interrupted with a point of order in the middle of my debating the issue, and you have now chosen to go to another member. To me, that is not appropriate, Mr. Chair.

Ms. Leona Alleslev: I believe that the committee chair said that was not the debate and that he was not allowing that to continue.

The Chair: Is yours a point of order?

Ms. Leona Alleslev: No.

The Chair: Mr. Sorenson is coaching well. Is this a point of order? No, okay.

Ms. Kwan has the floor. However, I am fairly rigorous that it be on the debate. The debate is about moving to committee business and not about committee business.

If the committee wants to discuss committee business, I would advise that we move to committee business. Otherwise, we will not be able to continue. The rules are meant to protect all members. Individual members have their own goals and agendas and ideas, which is very appropriate, but the committee needs to make committee decisions.

Ms. Kwan, if you are on the topic of "do we move to discuss committee business", that's appropriate.

Ms. Jenny Kwan: Thank you very much, Mr. Chair.

I do not support this motion to move into committee business in camera. There is a distinct difference when you go in camera versus when you are actually engaging in committee business in the public realm. We are talking about notices of motion. For example, when you move a notice of motion that is in writing and submitted, all of that goes in camera. This distinction I'm trying to make is to move a notice of motion, which I have now been told I'm not allowed to do, so that we can engage in this discussion in the public realm so the public knows what it is this committee is deciding in camera about what studies to undertake. There is a distinct difference, Mr. Chair.

For the motion to proceed, I'm speaking against it. In my view, a lot of these issues ought not to be in camera. In my view, these issues should be in the daylight. Let the sun shine, and let us see what it is the committee members want to discuss.

The Chair: Is the member making a motion? There is no rule that says business meetings are in camera. I'll just remind the committee of that. Business meetings may be in camera, and they may not be. An assumption is being made.

The second point is that the committee made a decision to not be in business in a general way. It was very much to honour the work of the analysts who presented a document of over 50 pages on a summary of evidence, which the committee requested them to do. You requested an extensive piece of work over the last two weeks, which they accomplished. This business meeting was requested by the committee so you could determine the next steps you wanted to take on this study with respect to the IRB's complaints and appointments processes. It was never meant to be a general business meeting. It was very specifically for the committee to honour the work, reflect on the work, and make a decision on whether you wanted further meetings on this particular topic. That was your decision, and I am trying to help you honour your decision as a committee. I believe it was unanimous. It wasn't one side or the other that requested the summary of evidence so we could analyze where we are on this study and make a good set of decisions. Just to clarify, that's why we're doing what we're doing. This moment was not meant to be a business meeting, nor was the business meeting we are supposedly engaging in shortly.

Continue, Ms. Kwan.

● (1240)

Ms. Jenny Kwan: Thank you, Mr. Chair.

I'm simply going by what's on the agenda on the public record where it says "in camera committee business". I am assuming that when we go to committee business, it is going to be in camera.

Perhaps I am mistaken, perhaps my assumption is wrong, or perhaps I misread the agenda. When Mr. Anandasangaree moved the motion, I assumed we were going to go in camera.

The Chair: I understand it's the committee's convention that when we have a business meeting we do it in camera. That is what we have done for the whole of this Parliament. However, that is always optional. If a member wanted to not be in camera, she or he may move that motion, which could be debated, defeated, or adopted.

Ms. Jenny Kwan: To continue with that, Mr. Chair, with respect to my assumption that the committee business would go in camera, I can wait for clarification. My point remains this. There are different ways that committee business can be dealt with and that notices of motions could be tabled. One of the ways to do it—and I and other committee members have done it before, without any hassle, by the way—is to have committee members just simply say that they would like to put it on the public record. It would take a couple of minutes at most. Then we would move on, and then we'd be done. For some reason, and I don't know why, today that is not being allowed. The member from the government side would like to shut down that opportunity. In my view—

The Chair: I will clarify to you that I have received instructions from your whip that we are not receiving a notice of motion. We were told that you wanted to speak about a notice of motion. Now I'm also getting a notice of motion. I need clarity on whether I have a motion, a notice of motion, or someone speaking about a notice of motion.

Ms. Jenny Kwan: I am happy to clarify for you, Mr. Chair. I will tell you that from time to time the chair, yourself, would like to interpret things in the way that is most convenient to you. As we engage in this debate, I was advised that a ruling was made that I could not move a notice of motion on the record. Then I went on to describe the issue I would like to discuss. You're now telling me that maybe I should move a notice of motion.

My point is that you can interpret it the way it fits your argument, the way you want, but I am going to present the issues the way I would like the public to understand the situations as they are.

As to committee business, you are absolutely right that when we deal with committee business, it often goes in camera. Committee members have an opportunity to present a notice of motion. When they present it in the bilingual format, which I have done and other committee members have done, it is dealt with in camera to discuss the business of what will be studied. That's the process.

There are times when committee members would actually put a notice of motion on the public record when committee meetings are taking place. I have done it before. Other committee members have done that before. I attempted to do that today, and I was shut down. I was disallowed. I was told that I cannot do it today. In fact, I was asked why I didn't do it like everyone else in the past. Well, everyone else in the past has actually exercised both options.

My point is this: there are studies that I think are important to this committee, studies that should be part of our committee meeting. We should engage in this discussion in the public realm. I raised one issue previously. Here's another one. I don't know whether other committee members have had this experience, but I have had tons of constituents who have come to me to say that the processing time for the permanent residence applications has been so delayed that it has significantly impacted their lives and the lives of their families.

This includes the significant processing delays of applications for permanent residency submitted by Iranian nationals, many of whom are current and former international students. They cannot move forward. Their lives are held in limbo. Their processing time is far beyond the typical processing time. Some of them have been waiting for their permanent residence applications to be processed for a couple of years. I don't know how that is normal, how it is acceptable. Perhaps the committee should turn their minds to this issue as a matter of committee business.

For example, just this week constituents came to me to say they had a major situation with what is known as "lost Canadians", an issue where people somehow cannot have their Canadian status, some of whom are affected by what's called the 28-year rule. People all of a sudden when they turn 28 are no longer Canadian citizens. They have no Canadian status. This impacts their lives in a significant way.

Second-generation individuals born outside of the country to first-generation Canadians also don't have status. This, too, impacts their lives in a significant way. This is something that was brought up to the previous minister, and the previous minister prior to departure—

● (1245)

Mr. Gary Anandasangaree: I'm going to make a point of order, Mr. Chair, because I think we are delving into issues that are completely outside the scope of this debate. I have brought this up a number of times. The substantive question at hand is whether we move to the agenda or not. I think this is absolute filibustering.

We have an agenda that was agreed to and that was published. We need to follow this. All I'm asking is that we have some constructive discussion on committee business going forward. If not, we will potentially lose the effectiveness of the next two meetings.

At this point, I'm going to leave it to you. I have brought this up a number of times. The discussion Ms. Kwan is talking about is quite outside the scope of what the issue is right now, which is to go on with the agenda.

I would urge you to rule on this, and to tell us if we are actually going to have a discussion on the agenda at hand.

The Chair: I'm going to tell you that the rules limit what I can do at this stage. We have an odd situation. We would be able to entertain these motions quite easily if you withdrew your motion and we continued the IRB study, which is what we are on right now. Right now, technically, we are still in part one of the meeting, which is the IRB study.

When someone duly has the floor, because we have a speakers order, Mr. Tabbara would continue and others could present notices of motion.

If you withdrew your motion, we would continue with the IRB study. We still have one of our witnesses here. We would continue that study. Mr. Tabbara has the floor. Following that, the Conservatives would have the floor, then Ms. Alleslev would have the floor, and then Ms. Kwan would have the floor, at which time it would be appropriate for her to bring notices of motion or discussion.

That is a possibility. We could continue the IRB study. If you withdrew your motion, we could do that.

Mr. Gary Anandasangaree: Mr. Chair, at this point it's redundant. We have less than 10 minutes, so I withdraw my motion at this point.

● (1250)

The Chair: Your motion is withdrawn.

We will continue then on the IRB study.

Mr. Tabbara, Mr. Maguire gave up his last minute and a half. You had his minute and a half, but you now have five minutes.

Mr. Marwan Tabbara: Thank you, Mr. Chair.

Thank you to our witness for patiently waiting. I'm sorry that you had to go through all that.

I want to continue on with some of the questioning that my colleague Mr. Whalen has talked about.

We had a submission from Mr. Ellis here. He said that replacing the IRB's new complaints process with an external complaints process would be "ill-advised." We heard a lot of testimony from a lot of witnesses that they wanted to have an external review. Mr. Ellis, in his submission, is countering that, saying that it would be better to have a different appointment process.

I want to hear your take on that. I want to bring the two different views this committee has heard and I want to get your opinion on those two different views.

The Chair: Ms. finlay, you may be delayed, but you're welcome to comment on that.

Ms. barbara findlay: Okay, sorry.

Was Mr. Ellis addressing the different appointment processes for the board or for the committee that would consider complaints?

Mr. Marwan Tabbara: Just in terms of appointing judges.... He mentioned in his submission there should be a different system for appointing judges.

Ms. barbara findlay: I'm not sure he would agree with what I think the system ought to include, but I certainly think that potential appointees should be evaluated on the question of whether or not they understand the social context approach to decision-making. In particular, since we're talking about queer claimants, they should have an understanding of the ways in which being queer has two significant differences other than potential persecution grounds: one being that they may be severed from their families, and the second being that they may feel they have to continue to keep a secret, so that will impact on their decision-making about queer claims.

I continue to believe that an independent body to assess complaints is not only desirable but in everybody's interest, including the board's.

Mr. Marwan Tabbara: That would be a different point of view from Mr. Ellis', and I just wanted to get that on the record.

In terms of an internal review—external review, sorry—can you give us your thoughts on how that would look, how that would play out, what you've experienced, and how this external review would help a lot of these claimants?

Ms. barbara findlay: I have not had experience with the internal review process. Frankly, I am of the opinion that it is mostly a window-dressing process at the moment. Were there an independent process, I think the model for the process could be adopted either from judicial complaints or from, for example, university complaints. There ought to be someone trauma informed and knowledgeable in medicine—they call them patient navigators—at the intake point who understands the context and the situation of a queer claimant wanting to make a complaint who could then assist them with the process. It wouldn't necessarily have to be lawyer driven.

Mr. Marwan Tabbara: And then, finally, here is one of my last questions. Mr. Ellis mentioned that the strength of the IRB was on the "independence of the individual adjudicator". Would you agree with that, that's where the strength lies?

● (1255)

Ms. barbara findlay: The strength of the IRB depends upon the judicial independence—

Mr. Marwan Tabbara: The "independence of the individual adjudicator".

Ms. barbara findlay: Yes, provided that those individuals have had adequate context–specific training about the situation, in particular of queers. There's a tension, sometimes artificial tension, posed between the right of decision-makers to make their decision untrammelled by any contextual information, and the claims that people should be trained and educated. In my view, there is not a conflict between those two things.

The Chair: I'm afraid that I need to cut you off there.

I'm going to check with the Conservatives.

You have a five-minute round. Does anybody want time?

Mr. Larry Maguire: No. I thought we would let the witnesses go home at one point, Mr. Chair, so no.

The Chair: All right.

Ms. Alleslev, for five minutes.

Ms. Leona Alleslev: Well this is my absolute privilege, because I wasn't supposed to have any time to ask you questions and I wanted to. Thank you for still being here and giving me the opportunity.

Earlier in your testimony, you spoke around standards and how important it would be to have the standards or code of conduct, and then consequently to understand what the consequences or the repercussions might be in terms of not meeting those standards.

I wonder if you could expand a bit on that and give us some idea of whether or not the training process is impacted by lack of clarity around standards, and therefore you don't know what you're training to. How, in a quasi-judicial body, would we be able to incorporate those standards and the consequences into the training and appointment process, from your perspective?

Ms. barbara findlay: I think Ms. Robinson had an excellent suggestion earlier in terms of the training, that it include training from the perspective of potential claimants. Whether you have that by way of an advisory committee or video vignettes or whatever, that's number one.

Number two, the content of the training would include how to ask questions. I have real sympathy for the job of the IRB, because you have to ask extremely sensitive questions and evaluate the answers for credibility when you know that the person may have had to lie to keep alive for all of their lives. It's not an easy thing, so it's training in that particular area of how to ask those questions.

I think that the standards are possible to articulate. For example, misgendering a transperson, using derogatory or dated language like "homosexual" or "transsexual", which is likely to create the impression in the claimant that the board either doesn't know or doesn't care about their individual situation. There are specific kinds of things, such as any kinds of comments that are likely to have a derisive impact or suggest that the claimant is somehow morally or religiously bad.

It's not difficult. You think about standards that will, quite apart from the substance of the complaint, count as whether or not the member is delivering a competent service as an adjudicator.

Ms. Leona Alleslev: How would we go about defining those standards? Should the complaints process or the review of individual's performance be limited to when we get complaints, or should the review of performance against the standard and then that follow-on training be ongoing, independent of the complaints process?

Ms. barbara findlay: I think both things should happen. There should be ongoing training, and there should be responsiveness to specific kinds of complaints. Formulating the standards of which I speak, I think can only be done with the assistance of either refugee claimants or their representatives, as an advisory committee, because you can't necessarily know what counts as offensive or demeaning or shutting down stuff.

● (1300)

Ms. Leona Alleslev: So you're saying a critical component to defining the standards would be from past refugee board appellants, not only from the refugee board institution itself.

Ms. barbara findlay: That's absolutely crucial.

The Chair: I'm afraid I need to end it there. We've reached one o'clock.

The meeting is adjourned.

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